United Nations A/HRC/RES/35/34

General Assembly

Distr.: General
13 July 2017

Original: English

Human Rights Council
Thirty-fifth session
6–23 June 2017
Agenda item 3

Resolution adopted by the Human Rights Council on 23 June 2017

35/34. Protection of human rights and fundamental freedoms while countering terrorism

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming its decision 2/112 of 27 November 2006 and resolutions 6/28 of 14 December 2007, 7/7 of 27 March 2008, 10/15 of 26 March 2009, 13/26 of 26 March 2010, 19/19 of 23 March 2012, 25/7 of 27 March 2014, 29/9 of 2 July 2015, 31/3 of 23 March 2016 and 33/21 of 30 September 2016, and Commission on Human Rights resolutions 2003/68 of 25 April 2003, 2004/87 of 21 April 2004 and 2005/80 of 21 April 2005, recalling General Assembly resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003, 59/191 of 20 December 2004, 60/158 of 16 December 2005, 61/171 of 19 December 2006, 62/159 of 18 December 2007, 63/185 of 18 December 2008, 64/168 of 18 December 2009, 65/221 of 21 December 2010, 66/171 of 19 December 2011, 68/178 of 18 December 2013, 70/148 of 17 December 2015 and 70/291 of 1 July 2016, and welcoming the efforts of all relevant stakeholders to implement them,

1. *Calls upon* States to ensure that any measure taken to counter terrorism and violent extremism conducive to terrorism complies with international law, in particular international human rights law, international refugee law and international humanitarian law;

2. *Expresses serious concern* at the violations of human rights and fundamental freedoms and of international refugee law and international humanitarian law in the context of countering terrorism and violent extremism conducive to terrorism;

3. *Affirms its unequivocal condemnation* of all acts, methods and practices of terrorism and violent extremism conducive to terrorism, in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, and of the financial, material or political support of terrorism, as unjustifiable in accordance with applicable international law, in the light of, in particular, their detrimental effects on the enjoyment of human rights and on democratic societies as well as the threat they pose to territorial integrity, the security of States and the stability of Governments;

GE.17-11905(E)

Please recycle

4. *Renews* its commitment to strengthen international cooperation to prevent, counter and combat terrorism, and in that regard calls upon States and other relevant parties, as appropriate, to continue to implement the United Nations Global Counter-Terrorism Strategy and its four pillars, which reaffirm, inter alia, respect for human rights for all and the rule of law as being the fundamental basis of the fight against terrorism;

5. *Stresses* the responsibility of States to protect persons in their territory against such acts, in full compliance with their obligations under international law, and in particular international human rights law, international refugee law and international humanitarian law;

6. *Deeply deplores* the suffering caused by terrorism to the victims and their families and, while stressing the need to promote and protect the rights of victims of terrorism, in particular women and children, reaffirms its profound solidarity with them, and stresses the importance of providing them with proper support and assistance while respecting, inter alia, considerations regarding remembrance, dignity, respect, accountability, truth and justice, in accordance with international law;

7. *Emphasizes* the need to ensure that victims of terrorism are treated with dignity and respect, stresses the need to promote international solidarity in support of the victims of terrorism, and recognizes the role that victims of terrorism can play, including in countering the appeal of terrorism;

8. *Calls upon* States to ensure that any person who alleges that his or her human rights or fundamental freedoms have been violated by measures taken or means employed to counter terrorism or violent extremism conducive to terrorism has access to justice, due process and an effective remedy, and that victims of human rights violations receive adequate, effective and prompt reparations, which should include, as appropriate, restitution, compensation, rehabilitation and guarantees of non-recurrence;

9. *Stresses* the importance of ensuring access to justice and accountability, including by developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems, in accordance with applicable international law, as a fundamental basis of any strategy to counter terrorism and violent extremism conducive to terrorism;

10. *Strongly encourages* relevant United Nations agencies to take into account in their technical assistance to counter terrorism, whenever appropriate, the elements necessary for building national capacity in order to strengthen criminal justice systems and the rule of law;

11. *Reaffirms* that terrorism and violent extremism cannot and should not be associated with any religion, nationality, civilization or ethnic group;

12. *Urges* States to ensure that measures taken to counter terrorism and violent extremism conducive to terrorism are not discriminatory, and not to resort to profiling based on stereotypes founded on ethnic, racial or religious grounds or any other ground of discrimination prohibited by international law;

13. *Recognizes* the important role of education, respect for cultural diversity, preventing and combating discrimination, employment and inclusion in helping to prevent terrorism and violent extremism conducive to terrorism, and welcomes the engagement of relevant United Nations agencies with Member States to implement strategies to prevent violent extremism conducive to terrorism through education,

14. *Also recognizes* the importance of preventing violent extremism conducive to terrorism, and invites Member States and regional and subregional organizations to consider developing national and regional plans of action in this regard;

15. *Acknowledges* that the active participation of civil society can reinforce ongoing governmental efforts to protect human rights and fundamental freedoms while countering terrorism, and calls upon States to ensure that measures to counter terrorism and violent extremism conducive to terrorism and to preserve national security do not hinder its work and safety and are in compliance with their obligations under international law;

16. *Urges* States to ensure that gender equality and non-discrimination are taken into account when shaping, reviewing and implementing all counter-terrorism measures;

17. *Calls upon* States to highlight the important role of women in countering terrorism and violent extremism conducive to terrorism, and to consider, when appropriate, the impact of counter-terrorism strategies on women's and children's human rights and women's and children's organizations, and to seek consultations with these organizations when developing strategies to counter terrorism and preventing violent extremism conducive to terrorism;

18. *Recognizes* the important role of religious leaders and institutions, local communities and community leaders in preventing and countering terrorism and violent extremism conducive to terrorism;

19. *Reiterates* that, given their potential status as victims of terrorism and of other violations of international law, all children alleged as, accused of or recognized as having infringed the law, particularly those who are deprived of their liberty, as well as child victims and witnesses of crimes, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with applicable international law, in particular the obligations set out under the Convention on the Rights of the Child, and, bearing in mind relevant international standards on human rights in the administration of justice in this regard, urges Member States to take relevant measures to effectively reintegrate children formerly associated with armed groups, including terrorist groups,

20. *Urges* all States to respect and protect the right to privacy, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, including in the context of digital communication, and calls upon States, while countering terrorism and violent extremism conducive to terrorism, to review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law, and urges them to take measures to ensure that any interference with the right to privacy is regulated by law, which must be publicly accessible, clear, precise, comprehensive and non-discriminatory, and that such interference is not arbitrary or unlawful, bearing in mind what is reasonable to the pursuance of legitimate aims;

21. *Emphasizes* the key importance of the full respect for the right to freedom of opinion and expression in efforts to fight terrorism and violent extremism conducive to terrorism, and also in countering the propaganda of terrorist and extremist groups, bearing in mind the provisions set out in the International Covenant on Civil and Political Rights;

22. *Urges* States to ensure that any measure taken or means employed to counter terrorism and violent extremism conducive to terrorism, including the use of remotely piloted aircraft, complies with their obligations under international law, including international human rights law and international humanitarian law;

23. *Also urges* States, while undertaking counter-terrorism activities, to respect their international obligations regarding humanitarian actors and organizations that play a key role in areas where terrorist groups are active;

24. *Further urges* States to undertake prompt, independent and impartial fact-finding inquiries whenever there are plausible indications of breaches of their obligations under international law as a result of any measures taken or means employed to counter terrorism, and to ensure accountability for those responsible for violations that amount to crimes under national or international law;

25. *Notes with concern* measures that undermine human rights and the rule of law, such as the detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and due process guarantees, the use of torture, the unlawful deprivation of the right to life and other fundamental freedoms, and urges States to provide for review of detention and to respect the rights to equality and non-discrimination in the administration of justice, to a fair and public hearing by a competent, independent and impartial tribunal as well as to the presumption of innocence, to a fair trial and other fundamental judicial guarantees, as provided for by international law, including international human rights law, and, as applicable, international humanitarian law and international refugee law;

26. *Urges* States to take measures to ensure that counter-terrorism laws and implementing measures are consistent with and are applied in a manner that fully respects international human rights law, in particular the rights enshrined in articles 10 and 11 of the Universal Declaration of Human Rights and further codified in articles 14 and 15 of the International Covenant on Civil and Political Rights, with a view to ensuring respect for the principle of certainty of the law by clear and precise provisions;

27. *Notes with concern* the unlawful transfer or return of suspects of terrorist activities to countries where there are substantial grounds for believing that they would be in danger of being subject to torture;

28. *Calls upon* Member States and the United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism;

29. *Encourages* Member States, United Nations entities, regional and subregional organizations and relevant actors to consider instituting mechanisms to involve youth in the promotion of a culture of peace, justice and human development, and of ethnic, national and religious tolerance by establishing and encouraging, as appropriate, education and public awareness programmes involving all sectors of society;

30. *Takes note with appreciation* of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;[1]

31. *Takes note* of the report of the United Nations High Commissioner for Human Rights on the negative effects of terrorism on the enjoyment of all human rights and fundamental freedoms;[2]

32. *Requests* the Special Rapporteur, in accordance with his mandate, to continue to gather, request, receive and exchange information on alleged violations of human rights and fundamental freedoms while countering terrorism, and to report regularly to the Human Rights Council;

---

[1] A/HRC/34/61.

[2] A/HRC/34/30.

33. *Requests* all States to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by reacting promptly to urgent appeals and providing the information requested, and to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries;

34. *Welcomes* the creation of the Office of Counter-Terrorism,[3] and encourages the Office and all relevant United Nations bodies, agencies, funds and programmes, and international, regional and subregional organizations involved in supporting counter-terrorism efforts, in particular those that are participating in the Counter-Terrorism Implementation Task Force and that provide technical assistance relating to the prevention and suppression of terrorism to consenting States, to include, as appropriate and where consistent with their mandates, respect for international law, in particular human rights law and, as applicable, international humanitarian law and international refugee law, as an important element of the technical assistance they offer to States in the area of counter-terrorism;

35. *Recalls* the need to continue to ensure that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened in order to enhance efficiency and transparency, in particular with regard to placing individuals and entities on, and removing them from, terrorism-related sanctions lists, while emphasizing the importance of sanctions in countering terrorism under international law, and welcomes the ongoing efforts of the Security Council in support of those objectives;

36. *Requests* the High Commissioner and the Special Rapporteur to present their reports, bearing in mind the content of the present resolution, to the Human Rights Council under agenda item 3, in conformity with its annual programme of work.

38th meeting
23 June 2017

[Adopted without a vote.]

---

[3] See General Assembly resolution 71/291.

Regretting the lack of cooperation by the Government of Eritrea with the commission of inquiry on human rights in Eritrea and the continued lack of cooperation with the Special Rapporteur on the situation of human rights in Eritrea, including the denial of access to the country,

Recalling the reports of the commission of inquiry,[1] and continuing to express its deep concern at the findings contained therein regarding past and ongoing human rights violations and abuses, such as enslavement, arbitrary detention, enforced disappearance, torture, other inhumane acts, persecution, rape and murder, and that there are reasonable grounds to believe that crimes against humanity have been committed in Eritrea since 1991, and reiterating that all perpetrators of such violations and abuses must be held accountable,

Emphasizing that every citizen has the right to take part in the conduct of public affairs of his or her country, directly or through freely chosen representatives, and expressing grave concern that national elections in Eritrea have not been held since 1993 and that the Constitution of 1997 has never been implemented,

Noting with deep concern the findings of the commission of inquiry regarding crimes involving human rights violations and abuses, committed by government and ruling party officials, military commanders and members of the National Security Office,

Noting with grave concern the continued use by the Government of Eritrea of arbitrary arrest and detention, including incommunicado detention in extremely harsh and life-threatening conditions, of persons suspected of evasion of national service, attempting to flee the country or unable to produce identity documents, exercising the right to freedom of religion, or freedom of opinion and expression, including of those perceived as critical of the Government, of those who return to the country after having fled national service, and of those detained in the aftermath of the attempt to take over, on 21 January 2013, the building of the Ministry of Information,

Welcoming the release by the Government of Eritrea, following the mediation of the Government of Qatar, of four Djiboutian prisoners of war on 18 March 2016, while recalling that 13 other Djiboutian prisoners of war are still detained in Eritrea,

Expressing grave concern at the widespread use of indefinite conscription into national/military service, a system that constitutes forced labour, including in a wide range of economic activities, and the reported forced conscription of children into military service, and regretting that the fear and experience of a lengthy national service causes large numbers of Eritreans to leave the country,

Deeply concerned that the situation of human rights in Eritrea is a primary factor in the large number of Eritreans leaving their country, often facing risks of abduction, abhorrent physical and mental abuse and other ill-treatment on their migration path, including abuses by smugglers and human traffickers, while welcoming the participation of the Government of Eritrea in multilateral forums to discuss counter-trafficking efforts,

Noting with deep concern the findings of the commission of inquiry regarding persecution on both religious and ethnic grounds, including of members of non-authorized religious denominations,

1. *Recalls* the report of the commission of inquiry on human rights in Eritrea,[2] stresses the importance of the work of the commission of inquiry and the information it has

[1] A/HRC/29/42 and A/HRC/32/47.
[2] A/HRC/32/47.

collected in support of future accountability, and continues to urge the Government of Eritrea to take immediate and concrete steps to implement its recommendations;

2. *Welcomes with appreciation* the work of the Special Rapporteur on the situation of human rights in Eritrea,[3] stresses its deep concern at the ongoing grave violations and abuses outlined therein, and urges the Government of Eritrea to take immediate and concrete steps to implement the recommendations;

3. *Welcomes* the oral update of the Special Rapporteur to the Human Rights Council at its thirty-fourth session;

4. *Condemns in the strongest terms* the reported systematic, widespread and gross human rights violations and abuses that have been and are being committed by the Government of Eritrea in a climate of generalized impunity;

5. *Condemns in particular* the arbitrary detention, enforced disappearances, torture, killing, sexual violence, discrimination on the basis of religion and ethnicity and reprisals for the alleged conduct of family members, and the human rights violations and abuses in the context of indefinite national service, including those involving forced labour, the forced military conscription of children and sexual violence;

6. *Expresses its deep concern* at the severe restrictions on the right to freedom to hold opinions without interference, freedom of expression, including the freedom to seek, receive and impart information, liberty of movement, freedom of thought, conscience and religion, and freedom of peaceful assembly and association, and at the detention of journalists, human rights defenders, political actors, religious leaders and practitioners in Eritrea;

7. *Reiterates* that all those responsible for past and present human rights violations and abuses in Eritrea must be held accountable;

8. *Also reiterates* its calls upon the Government of Eritrea:

(*a*) To end its use of arbitrary detention of persons in Eritrea, and to end the use of torture or other cruel, inhumane and degrading treatment or punishment;

(*b*) To account for all those arbitrarily detained, including members of the G-15 reform group, journalists, political prisoners and those detained in the aftermath of the attempted takeover on 21 January 2013 of the building housing the Ministry of Information, and either to release them or to ensure that they are given a fair and transparent trial without any further undue delay and with full respect for minimum fair-trial guarantees;

(*c*) To put an end to the system of indefinite national service by demobilizing national service conscripts who have completed their mandatory 18 months of service, as announced by the Government of Eritrea, and by effectively ending the practice of engaging them in forced labour after such a period, to provide for conscientious objection to military service, and to end the compulsory practice of all children undertaking the final year of schooling in a military training camp;

(*d*) To respect everyone's right to freedom of expression and to freedom of thought, conscience and religion or belief, and the right to freedom of peaceful assembly and association;

(*e*) To ensure free, fair and equal access to an independent and impartial court to challenge the lawfulness of any detention, and to improve prison conditions, including by prohibiting the use of underground cells and shipping containers to hold prisoners, ending

[3] See A/HRC/35/39.

the use of secret detention centres and the practice of incommunicado detention, allowing regular access to prisoners for relatives, legal advocates and independent monitoring mechanisms, and to permit prompt and regular unhindered access to medical care;

(*f*) To end the practice of forcing citizens to participate in the militia;

(*g*) To investigate promptly all allegations of extrajudicial killings, torture and other cruel, inhumane and degrading treatment or punishment, rape and sexual abuse within the national service, and to bring perpetrators to justice;

(*h*) To end the practice of shooting to wound or kill Eritrean citizens attempting to cross the border to flee the country;

(*i*) To enhance further the promotion and protection of women's rights, including by taking additional measures to combat harmful practices, such as child, early and forced marriage and female genital mutilation;

(*j*) To take immediate concrete measures to implement the recommendations made during its second universal periodic review, to report on progress made and to cooperate fully with the Human Rights Council and during the third cycle of the universal periodic review;

(*k*) To end "guilt-by-association" policies that target family members of those who evade national service, seek to flee Eritrea or commit any other acts alleged to be crimes;

(*l*) To ensure the right to form and join political parties and guarantee the right and opportunity of all citizens to take part at all levels in the political process and to vote and be elected in free, fair and transparent democratic elections, guaranteeing the free expression of the will of the people;

(*m*) To strengthen cooperation further with the Office of the United Nations High Commissioner for Human Rights in accordance with its international human rights obligations;

(*n*) To allow unhindered access to the country to further missions by the Office of the High Commissioner, the human rights treaty bodies and all mechanisms of the Human Rights Council, and to cooperate with all international and regional human rights mechanisms;

(*o*) To provide the Office of the High Commissioner with all relevant information on the identity, safety, well-being and whereabouts of all detained persons and persons missing in action, including members of the G-15, journalists, those detained in the aftermath of the attempted takeover on 21 January 2013 of the building of the Ministry of Information and the 13 Djiboutian combatants still detained;

(*p*) To work to finalize and implement the Constitution of 1997 in consultation with all relevant stakeholders;

9. *Encourages* States in which witnesses reside to protect those who have cooperated with the commission of inquiry and the Special Rapporteur, and in particular to protect them from reprisals;

10. *Welcomes* the Special Rapporteur's preliminary contact with the African Union, and takes note of her recommendations for a regional accountability mechanism, given the assertion by the commission of inquiry that neither a hybrid tribunal nor a truth commission would be a viable option in the current circumstances;

11. *Urges* Eritrea to make available information pertaining to the remaining Djiboutian prisoners of war missing since the clashes of 10 to 12 June 2008 so that those concerned may ascertain the presence and condition of Djiboutian prisoners of war;

12. *Decides* to extend the mandate of the Special Rapporteur on the situation of human rights in Eritrea for a period of one year, and requests the mandate holder to continue as appropriate the follow-up on the implementation of the recommendations of the commission of inquiry and her recommendations in her report, on the situation of human rights in Eritrea, to submit and present a written report to the Human Rights Council at its thirty-eighth session, and to address and engage in an interactive dialogue with the General Assembly at its seventy-second session;

13. *Also decides* to hold an enhanced interactive dialogue on the situation of human rights in Eritrea at its thirty-seventh session, with the participation of the Special Rapporteur, the Office of the High Commissioner, civil society and other relevant stakeholders;

14. *Calls upon* the Government of Eritrea to consider the establishment of a presence of the Office of the High Commissioner in Eritrea with a holistic mandate to protect, promote and monitor human rights with unhindered access;

15. *Also calls upon* the Government of Eritrea to cooperate fully with the Special Rapporteur, to permit the Special Rapporteur and her staff members unrestricted access to visit the country, to give due consideration to the recommendations contained in the reports of the Special Rapporteur, and to provide her with the information necessary for the fulfilment of her mandate, and underlines the importance for all States to lend their support to the Special Rapporteur for the discharge of her mandate;

16. *Requests* the Office of the High Commissioner to continue to enhance engagement in improving the situation of human rights in Eritrea, and to present an oral update to the Human Rights Council at its thirty-seventh session on progress made in the cooperation between Eritrea and the Office, and on its impact on the situation of human rights in Eritrea;

17. *Calls upon* the Government of Eritrea to immediately stop the practice of demanding that Eritreans in the diaspora sign the B4/4.2 form (the so-called "regret form") in which they accept responsibility for any crime, if committed, before leaving the country, in order to be entitled to consular services from Eritrean diplomatic missions;

18. *Also calls upon* the Government of Eritrea to stop the use of extortion, threats of violence, fraud and other illicit means to collect taxes outside Eritrea from its nationals or other individuals of Eritrean origin, and to abstain from such practices;

19. *Urges* the international community to strengthen efforts and collaboration to ensure the protection of those fleeing from Eritrea, in particular unaccompanied children;

20. *Encourages* business enterprises to carry out appropriate human rights due diligence in order to identify, prevent, mitigate and account for how they address their human rights impact, including with respect to allegations of use of conscript labour;

21. *Encourages* Member States to increase attention and, if feasible, resources to improve the situation of human rights in Eritrea by strengthening engagement with the Government of Eritrea;

22. *Requests* the Secretary-General to provide the Special Rapporteur with all information and the resources necessary to fulfil her mandate;

23. *Requests* the General Assembly to submit the report and the oral updates of the commission of inquiry to all relevant organs of the United Nations for consideration and appropriate action;

24. *Reiterates its strong encouragement* to the African Union to follow up on the report and recommendations of the commission of inquiry and the update on human rights in Eritrea by establishing an investigation, supported by the international community, with a view to examining and bringing to justice those responsible for crimes involving violations and abuses of human rights identified by the commission of inquiry, including any that may amount to a crime against humanity;

25. *Decides* to remain seized of the matter.

38th meeting
23 June 2017

[Adopted without a vote.]